SUPREME COURT, U. S.

FILED

No. 176

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In the Supreme Court of the United States

OCTOBER TERM, 1969

SEARS ROEBUCK AND CO., PETITIONER

v.

CARPET LAYERS, ETC., LOCAL UNION NO. 419, AFL-CIO, and CLYDE F. WEBER, Regional Director of the Twenty-Seventh Region of the NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE REGIONAL DIRECTOR IN OPPOSITION

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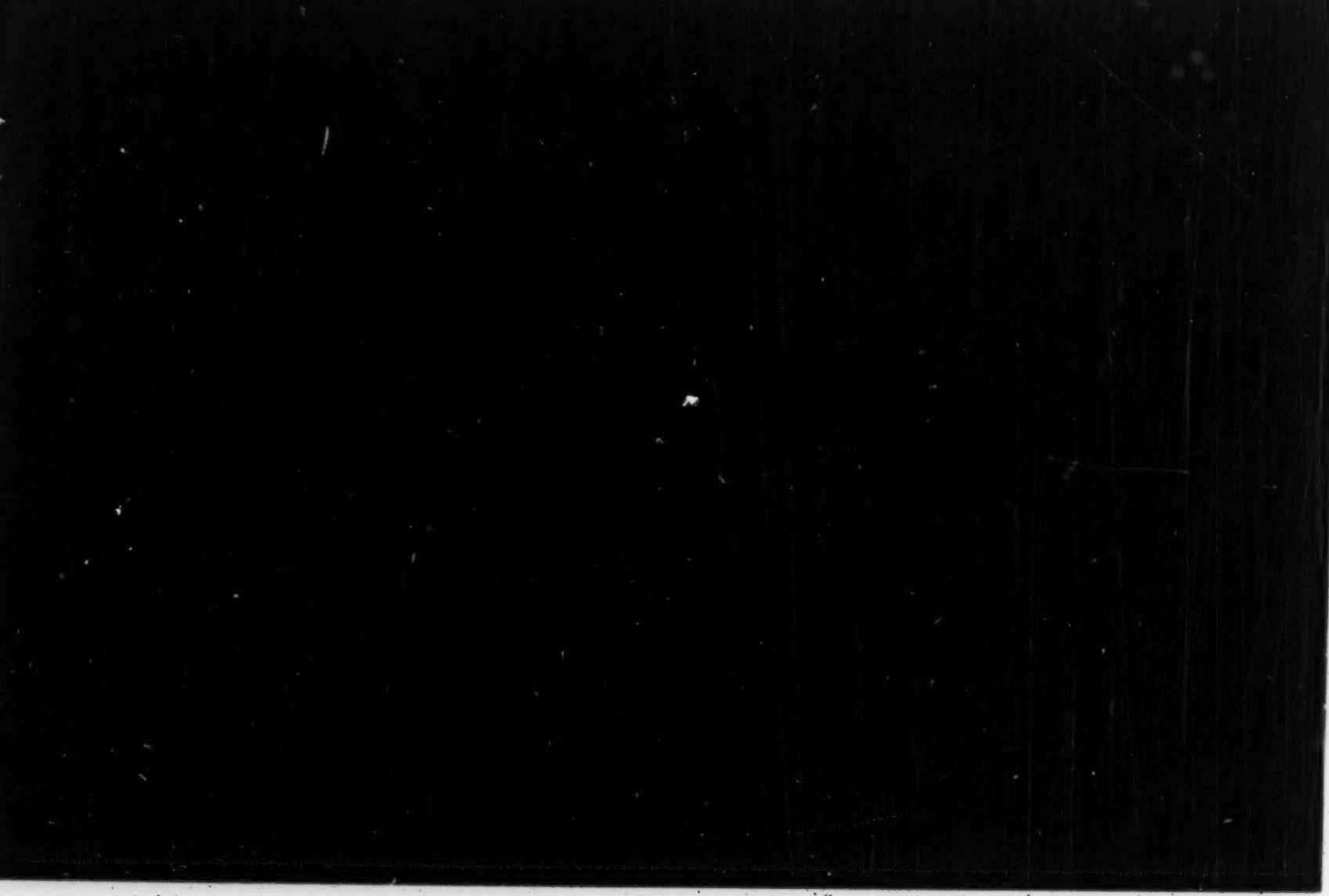

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 476

SEARS ROEBUCK AND CO., PETITIONER

v.

CARPET LAYERS, ETC., LOCAL UNION NO. 419, AFL-CIO, and CLYDE F. WAERS, Regional Director of the Twenty-Seventh Region of the NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE REGIONAL DIRECTOR IN OPPOSITION

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1. Petitioner filed a charge with the National Labor Relations Board that respondent union was engaging in a secondary boycott in violation of Section 8(b)(4)(B) of the National Labor Relations Act. Upon determining that a complaint should be issued, respondent Waers, the Regional Director of the National Labor Relations Board, petitioned the United States District Court for the District of

Colorado for a temporary injunction pursuant to Section 10(*l*) of the Act. After a hearing, the district court denied an injunction (Pet. App. A7-A13). Although the Regional Director did not appeal from this decision, petitioner, the charging party, sought to do so. The court below dismissed petitioner's appeal, accepting the Regional Director's contention that petitioner lacked standing to appeal (Pet. App. A1-A6).

2. The question which petitioner seeks to present —whether the charging party before the Board has standing to appeal the district court's denial of Section 10(*l*) injunctive relief where the Board's Regional Director determines not to appeal that decision—has become moot in this case. By its terms, Section 10(*l*) merely authorizes the issuance of an injunction "pending the final adjudication of the Board with respect to [the] matter" (Pet. App. A68). On June 20, 1969, subsequent to the decision of the court of appeals herein, the Board issued its decision and order in the case, finding that the union had violated Section 8(b)(4)(B) of the Act and ordering the union, *inter alia*, to cease and desist its unlawful conduct (Pet. App. A14-A18). Thus, there has been a "final adjudication of the Board" with respect to petitioner's charge, and there is no longer any basis for a Section 10(*l*) injunction. Indeed, if an injunction had been issued by the district court, it would have terminated with the issuance of the Board's decision. See, *e.g.*, *Carpenters' District Council* v. *Boire*, 288 F. 2d 454, 455 (C.A. 5); *Monique, Inc.* v. *Boire*, 344 F. 2d 1017, 1018 (C.A. 5); *Reyn-*

olds v. *Nashville Bldg. Trades Council*, 383 F. 2d 562, 564 (C.A. 6).[1]

3. In all events, the court of appeals correctly concluded that petitioner's assertion that a charging party has a right to maintain an appeal in its own behalf finds no support in the language of Section 10(l) and is inconsistent with the circumscribed injunctive remedy which Congress entrusted to the initiative and management of the regional director (Pet. App. A4-A5). There is no conflict of decisions on this point. The Ninth Circuit recently reached the same conclusion in a comparable situation, and this Court declined to review its ruling. *Los Angeles Herald Examiner* v. *San Francisco-Oakland Newspaper Guild, et al.*, No. 409, O.T., 1968, certiorari denied, 393 U.S. 926. *Auto Workers* v. *Scofield*, 382 U.S. 205, and *Retail Clerks Union* v. *Food Employers Council, Inc.*, 351 F. 2d 525 (C.A. 9), are distinguishable for the reasons given by the court of appeals (Pet. App. A5-A6).

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[1] The final Board decision in the present case is pending on review in the District of Columbia Circuit, pursuant to petitions filed under Section 10(e) and (f) of the Act. *Carpet Layers, etc., Local 419* v. *National Labor Relations Board*, No. 23223, C.A.D.C. Should injunctive relief be deemed appropriate pending a decision by the court of appeals, the Board is empowered, under Section 10(e), to petition that court for such relief. See *McLeod* v. *Business Machine Conference Board*, 300 F. 2d 237, 241 (C.A. 2).

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.[2]

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SEPTEMBER 1969.

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[2] Since the district court denied injunctive relief and since there appear to be no collateral consequences arising from that decision, inasmuch as the underlying substantive issues have been resolved in the context of the Labor Board proceeding, we believe that disposition of this case by denial of the petition for a writ of certiorari, rather than by vacation of the judgment of the district court, would be appropriate. Compare *United States* v. *Munsingwear*, 340 U.S. 36.

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